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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,918	03/23/2001	Joseph Kaminsky	03551-P0001A	6092
24126	7590	08/16/2005	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			LUGO, CARLOS	
			ART UNIT	PAPER NUMBER

3676

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/816,918

Applicant(s)

KAMINSKY ET AL.

Examiner

Carlos Lugo

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 31-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. This Office Action is in response to applicant's request for reconsideration filed on June 9, 2005.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-8,11,15,18 and 20-30 are rejected** under 35 U.S.C. 102(e) as being anticipated by US Pat No 6,604,089 to Van Horn et al (Van Horn).

Regarding claim 1, Van Horn discloses a dynamic pricing marketing and sales system comprising an inventory sales tool (Web Page) accessible to a plurality of buyers through at least one medium.

The inventory sales tool is effective to provide an indication of an available quantity of an item and a plurality of pricing schemes (either buy it at current price or demand a price, Col. 11 Line 54 to Col. 12 Line 27).

At least one of said pricing schemes permits at least one of said buyers to request an immediate purchase at an immediate purchase price (Col. 12 Lines 19-27).

The immediate purchase price conditionally decreases over time (depending of the price curve).

At least one of said pricing schemes permits at least one of said buyers to request a deferred purchase when a user-defined deferred purchase price matches a decreased immediate purchase price (Col. 11 Line 54 to Col. 12 Line 4).

As to claims 2 and 20-24, Van Horn discloses that the medium is the Internet (e-commerce, Col. 1 Lines 7-10).

As to claim 3, Van Horn discloses that the system further comprises a buyer selectable shopping channels (38) that permit the buyer access to the inventory items based on a type of merchandise (Col. 11 Lines 36-50).

As to claim 4, Van Horn discloses that the immediate purchase price decrease when no purchase requests are made for the product (Figures 6 and 7).

As to claim 5, Van Horn illustrates that the immediate purchase price increases a specified amount when an immediate purchase is made (the purchases or biddings of the buyers affect the pricing curve, Figures 6 and 7).

As to claim 6, Van Horn discloses that the indication is effective to provide information related to purchase by all of the buyers (Col.11 Lines 15-34).

As to claim 7, Van Horn discloses that the item is made available for a limited duration of time (starting and ending time, Col. 11 Lines 15-34).

As to claim 8, Van Horn discloses that the immediate purchase price can fluctuate (price curve, Figures 6 and 7).

As to claim 11, Van Horn discloses that wherein a filled immediate purchase, it will decrease the available quantity of the item.

As to claim 15, Van Horn discloses that the sell sets a minimum immediate purchase price (starting price, Col. 11 Lines 15-34).

As to claim 18, Van Horn discloses that the inventory items are composed of excess inventory (any type of good or service).

As to claims 25-30, Van Horn discloses that the system further includes an indication showing the buyer purchase (Col. 12 Line 25).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 9,10,13 and 16 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,604,089 to Van Horn et al (Van Horn) in view of US Pat No 6,434,536 to Geiger.

Regarding claims 9 and 16, Van Horn fails to disclose that the inventory sales tool includes a lot price containing a specified quantity of items and that the lot price and the specified quantity determine an average price for each item of the lot.

Van Horn discloses that the items are sold individually and that the deferred purchase request includes a demand purchase request made by a first buyer.

Geiger illustrates an inventory sales tool that includes a lot price containing a specified quantity of items (hard drives) and that the lot price and the specified quantity determine an average price for each item of the lot (Figures 12-14).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a sale tool, as taught by Geiger, into an inventory sales tool as described by Van Horn, in order to be able to sale a large quantity of an item at a reasonable price.

As to claim 10, Van Horn discloses that more than one buyer can try to obtain an item by a deferred purchase (Offers bellow the Current Price, Col. 11 Line 54 to Col. 12 Line 15).

As to claim 13, Van Horn discloses that the seller sets the price (Col. 11 Lines 15-34).

6. **Claims 12 and 14 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,604,089 to Van Horn et al (Van Horn) in view of Egghead.com (Egghead).

Van horn fails to disclose that the inventory sales tool further includes an auction price.

Egghead teaches that is known in the art to have an inventory sales tool that includes a minimum auction price that is set by the seller (sections "Auction Bidding Guide and "Check current Bid" section).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an auction price, as taught by Egghead, into a sales

tool as described by Van Horn, in order to provide the customers with another way to obtain the product that they wish to buy.

7. **Claims 17 and 19 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,604,089 to Van Horn et al (Van Horn) in view of US Pat No 6,434,536 to Geiger and further in view of Egghead.com (Egghead).

Van horn, as modified by Geiger, fails to disclose that the inventory sales tool further includes an auction price.

Egghead teaches that is known in the art to have an inventory sales tool that includes a minimum auction price that is set by the seller (sections "Auction Bidding Guide and "Check current Bid" section).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an auction price, as taught by Egghead, into a sales tool as described by Van Horn, in order to provide the customers with another way to obtain the product that they wish to buy.

### ***Response to Arguments***

8. Applicant's arguments filed on June 9, 2005 have been fully considered but they are not persuasive.

Regarding applicant's arguments that Van Horn fails to disclose that the no sale is unconditionally consummated immediate (Page 16 Line 4), Van Horn discloses this limitation. The "critical mass" is just affecting the price, not the immediate purchase.

If someone wants to buy a product at the immediate price (current price), the system acknowledges the offer and is accepted (Col. 12 Lines 19-26).

If someone wants to offer a price, the price will go up or down depending of the demand of the product (critical mass). An if the price drops to the offer price of the buyer, the system acknowledges the offer and is immediate included in the pool of offers to be accepted (Col 11 Line 60 to Col. 12 Line15). Therefore, the rejection is maintained.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number 571-272-7058. The examiner can normally be reached on 9-6pm EST.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-272-7049.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

*C.L.*

Carlos Lugo  
AU 3676

August 9, 2005.

A handwritten signature in black ink, appearing to read "Brian Glessner", followed by a long horizontal flourish.

**BRIAN E. GLESSNER**  
**PRIMARY EXAMINER**